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| 09/936,987 | 03/05/2002 | George Kramrich | 47276-00014USPT | 2871 |

7590 07/31/2007
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| EXAMINER |
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SHAW, PELING ANDY

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| ART UNIT | PAPER NUMBER |
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2144

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07/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/936,987

Applicant(s)

KRAMERICH ET AL.

Examiner

Peling A. Shaw

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Making Final/New Grounds

1. Applicant's arguments and amendments filed on 05/29/2007 have been carefully considered but they are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the following new grounds of rejection as explained here below, necessitated by Applicant's substantial amendment (e.g. by incorporating the limitations of "...includes a plurality of calculated indexes related to the provider sites, the indexes calculated using a plurality of metrics with each metric related to the plurality of provider sites ..." into the independent claim 1, has changed the scope of dependent claims 4, 6 and 8-14; "... includes a plurality of calculated indexes related to the traffic related to the traffic monitoring points, the calculated indexes determined based upon both the pedestrian traffic data and non-traffic data using a plurality of predetermined formula ..." into the independent claim 3, has changed the scope of dependent claims 5, 7 and 15; "... a processor for generating requested national retail traffic index data, wherein the national retail traffic index data is calculated by the processor according to a plurality of stored formulas using the data stored in the pedestrian traffic database and the at least one non-traffic database according to the user selected parameters ..." into independent claim 16, has changed the scope of dependent claims 17-25) to the claims which significantly affected the scope thereof, and will require further search and consideration.
2. Amendment received on 05/29/2007 has been entered into record. Claims 1, 3, 9-11, 15-16 and 26 are amended. Claim 2 is cancelled. Claims 1 and 3-26 are currently pending.
3. Amendment received on 05/08/2006 was entered into record. Claims 1, 3, 16 and 26 were amended.

Priority

4. This application is a 371 of PCT/US00/07001 filed on 03/17/2000 which claims the benefit of 60/125,451 filed on 03/19/1999. The filing date is 03/05/2002.

Claim Rejections - 35 USC § 112, second paragraph

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-6, 8-14 and 26 are rejected under 35 U.S.C. 112, second paragraph as following:

- a. Claims 1 and 26 recite the limitation of "... national traffic index data ..." There is insufficient antecedent basis for this limitation in the claim. Claims 1, 26, their dependent claims 4-6 and 8-14. For the purpose of applying art, the claims are read as with the limitation of "... the national retail traffic index data ..." instead of "... the national traffic index data ..."

Appropriate correction is required.

Claim Rejections - 35 USC § 112, first paragraph

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 3-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the original specification and claims in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

- a. Claims 1, 3, 16 recite the limitation of “... non-traffic related data ...” that is not found in the original specification or claims. It is not clear what the limitation mean. It would require undue experimentation for one of ordinary skill in the networking art at the time the invention was made to be able to add and test all these functions inclusively rather than just pick a particular function for implementation. Claims 1, 3, 16, their dependent claims 4-15 and 17-25 are rejected. For the purpose of applying art, claim 1, 3 and 16 are read as with further limitation as per claims 4-5 and 17.
- b. Claim 3 recites the limitation of “... the calculated indexes determined based upon both the pedestrian traffic data and non-traffic data using a plurality of predetermined formula ...” that is not found in the original specification or claims. It is not clear what the limitation mean. It would require undue experimentation for one of ordinary skill in the networking art at the time the invention was made to be able to add and test all these functions inclusively rather than just pick a particular function for implementation. Claims 3, its dependent claims 5, 7 and 15 are rejected. For the purpose of applying art, claim 3 is read as with the consideration of the limitation.
- c. Claim 16 recites the limitations of “...wherein the data mart includes a plurality of predetermined parameters selectable by a user and the request includes a set of user selected parameters; ...” and “... a processor for generating requested national retail traffic index data, wherein the national retail traffic index data is calculated by the processor according to a plurality of stored formulas using the data stored in the pedestrian traffic database and the at least one non-traffic database according to the user selected parameters ...” that are not found in the original specification or claims.

It is not clear what these limitations mean. It would require undue experimentation for one of ordinary skill in the networking art at the time the invention was made to be able to add and test all these functions inclusively rather than just pick a particular function for implementation. Claim 16, and its depending claims 17-25 are thus rejected. For the purpose of applying art, claim 16 is read with the consideration of these limitations.

- d. Claim 26 recites the limitation of "... and may manipulate it to create a user relevant national traffic index ..." that is not found in the original specification or claims. It is not clear what the limitation mean. It would require undue experimentation for one of ordinary skill in the networking art at the time the invention was made to be able to add and test all these functions inclusively rather than just pick a particular function for implementation. For the purpose of applying art, claim 26 is read as with the consideration of the limitation.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-8, 12-19 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable

Conrad et al. (US 5465115 A), hereinafter referred as Conrad, in view of Fox et al. (US

5832456 A), hereinafter referred as Fox, and Sneeringer (US 6618709 B1), hereinafter referred as Sneeringer.

- a. Conrad shows (claim 1) a pedestrian traffic monitoring system (column 2, lines 35-39: pedestrian traffic monitoring) system comprising: a plurality of traffic monitors at a plurality of provider sites (column 2, lines 35-39: pedestrian traffic monitoring at retail); a server connected to said traffic monitors to receive traffic data from said traffic monitors (column 4, lines 55-63: a computer is connected to video imager to receive counting data); a traffic database for storing said pedestrian traffic data (column 4, lines 55-63: a computer is connected to video imager to receive counting data); displaying pedestrian traffic count (column 3, lines 14-25); a data communications connection through which users may access said database for transferring data among the traffic database. Conrad does not show indexing pedestrian traffic data; at least one database for storing non-traffic related data; a view creator for generating national retail traffic index data by processing data stored in the traffic database and the at least one database for storing non-traffic related data, wherein the national retail traffic index data includes a plurality of calculated indexes related to the provider sites, the indexes calculated using a plurality of metrics with each metric related to the plurality of provider sites and based upon both the pedestrian traffic data and non-traffic data; a national retail traffic data mart for storing the national retail traffic index data; a data communications connection for transferring data among the traffic database, the at least one database for storing non-traffic related data, the view creator, the national retail traffic index database and the

server wherein a user can access the national traffic index data mart via the data communications connection.

- b. Fox shows indexing pedestrian traffic data (column 3, lines 7-21: MIS, store traffic); at least one database for storing non-traffic related data (column 3, lines 7-21: MIS, labor data); a view creator for generating national retail traffic index data by processing data stored in the traffic database and the at least one database for storing non-traffic related data, wherein the national retail traffic index data includes a plurality of calculated indexes related to the provider sites, the indexes calculated using a plurality of metrics with each metric related to the plurality of provider sites and based upon both the pedestrian traffic data and non-traffic data (column 8, lines 46-56: retail performance per stores, to include forecast weather data); a national retail traffic data mart for storing the national retail traffic index data (Fig. 3; column 2, lines 42-61: external and industry data) in an analogous art for the purpose of weather adapted business performance forecasting.
- c. Sneeringer shows a data communications connection for transferring and accessing database (column 26, line 66-column 67, line 10: database query via secured page access) in an analogous art for the purpose of web-based monitoring of energy related usage, and client accessibility therefor.
- d. It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Conrad's functions of video traffic monitor for retail with Fox's functions of viewing and forecasting business performance and Sneeringer's functions of web-based monitoring and database accessing.

- e. The modification would have been obvious because one of ordinary skill in the art would have been motivated to extend Conrad's functions of video traffic monitor for retail to storing and remote accessing the collected data per Fox (abstract) and Sneeringer's teaching for management purpose per Conrad (column 1, lines 17-27), Fox (abstract) and Sneeringer (abstract)'s teaching.
- f. Regarding claim 4, Fox shows wherein the at least one database for storing non-traffic related data comprises: a demographic database for storing census demographic (column 10, lines 40-47: demographic data); a profiles database for storing site profiles and corporate profiles, wherein the site profiles are associated to the plurality of provider sites, and wherein the corporate profiles are associated to a plurality of corporations (column 10, lines 40-47: point of sale data); and a customer database for storing sales data (column 10, lines 40-47: order data).
- g. Regarding claim 6, Fox shows wherein labor data is stored in the corporate profiles; and wherein the view creator further generates national retail traffic index data by processing the sales data in the customer database, the labor data in the profiles data and the pedestrian traffic data in the traffic database (Fig. 3; column 2, lines 42-61: labor data, store traffic; column 10, lines 40-47: order data).
- h. Regarding claim 8, Conrad shows wherein the plurality of traffic monitors comprises a plurality of video cameras (column 2, lines 35-39: video imaging).
- i. Claims 3, 5 and 7 are of the same scope as claims 1, 4 and 6. They are rejected for the same reasons as for claims 1, 4 and 6.

- j. Regarding claim 12, Sneeringer shows further comprising at least one hub, the at least one hub connecting the plurality of traffic monitors at each of the plurality of provider sites (column 28, lines 30-35: hub).
- k. Regarding claim 13, Sneeringer shows wherein the traffic monitors are connected to the server via the Internet (column 28, lines 30-35: Internet).
- l. Regarding claim 14, Sneeringer shows wherein the traffic monitors are connected to the server via a virtual private network (column 33, lines 26-37).
- m. Claim 15 is of the same scope as claim 14. It is rejected for the same reasons as for claim 14.
- n. Claims 16-19 and 23-26 are of the same scope as claims 1, 4, 6, 8 and 12-14. These are rejected for the same reasons as for claims 1, 4, 6, 8 and 12-14.

Together Conrad, Fox and Sneeringer disclosed all limitations of claims 1, 3-8, 12-19 and 23-26. Claims 1, 3-8, 12-19 and 23-26 are rejected under 35 U.S.C. 103(a).

8. Claims 9-11 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable Conrad et al. (US 5465115 A), hereinafter referred as Conrad, in view of Fox et al. (US 5832456 A), hereinafter referred as Fox, Sneeringer (US 6618709 B1), hereinafter referred as Sneeringer, and Jannarone (US 6216119 B1), hereinafter referred as Jannarone.

- a. Conrad, Fox and Sneeringer show claims 1, 4 and 16-17 as above. None of Conrad, Fox and Sneeringer shows (claim 9) wherein the view creator edits the traffic data for usability prior to using for the computation of indexes.
- b. Jannarone shows (claim 9) wherein the view creator edits the traffic data for usability prior to using for the computation of indexes (column 3, lines 57-62: supply imputed

feature value) multi-kernel neural network concurrent learning, monitoring, and forecasting system.

- c. It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Conrad's functions of video traffic monitor for retail with Fox's functions of viewing and forecasting business performance, Sneeringer's functions of web-based monitoring and database accessing and Jannarone's functions of supply imputed feature values.
- d. The modification would have been obvious because one of ordinary skill in the art would have been motivated to extend Conrad's functions of video traffic monitor for retail to storing and remote accessing the collected data per Fox (abstract) and Sneeringer's teaching, and Jannarone's functions of supply imputed feature values for management purpose per Conrad (column 1, lines 17-27), Fox (abstract), Sneeringer (abstract) and Jannarone (column 1, lines 6-11)'s teaching.
- e. Regarding claim 10, Jannarone shows wherein the view creator recognizes missing data and perform computation to replace the missing data (column 3, lines 57-62: supply imputed feature value for missing measured input value),
- f. Regarding claim 11, Jannarone shows wherein the view creator detects outliers in the traffic data and make adjustments therefore (column 3, lines 57-62: supply imputed feature value for out-of-tolerance measured input value).
- g. Claims 20-22 are of the same scope as claims 9-11. These are rejected for the same reasons as for claims 9-11.

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Together Conrad, Fox, Sneeringer and Jannarone disclosed all limitations of claims 9-11 and 20-22. Claims 9-11 and 20-22 are rejected under 35 U.S.C. 103(a).

Response to Arguments

9. Applicant's arguments dated 05/29/2007 with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.
- a. Examiner has amended the claim language substantially. Examiner has reviewed the claim language and identified multiple claim rejections under 35 U.S.C. 112, first and second paragraphs. These amended claim changes also bring up multiple new subject matters that are out of the scope of claim presented to the previous non-final action dated 08/22/2006. Further search and examination are required in addition to applicant's current arguments.
 - b. Applicant stated that mathematical algorithms to produce usable information for a user as per lines 17-25 on page 15, lines 10-20 on page 20 or lines 30 of page 1 to line 1 of page 2 of applicant's specification. Examiner could not relate the cited the reference to applicant's specification to the claim language, particular no "formula" is clearly specified in applicant's specification. Nor the nature of "formula" is clearly identified to scope the current claim language.
 - c. Applicant alleged that the cited references do not produce calculated traffic index data that is made available to users via a data mart. More specifically, the cited references do not produce traffic index data that is based upon a plurality of different data types, including traffic data and non-traffic data. Examiner has reviewed the current claim language in light of applicant's original specification and claim language. As per item a above, the alleged limitation relates additional claim changes that require further search and examination. As per item b above, the alleged limitation seems to be not

supported by applicant's original specification and claim language. Examiner has further reviewed previous claim rejections and applied prior art as per office action dated 08/22/2006. The applied prior arts in combinatory seem to have all limitations of current claim language. As for applicant's further arguments of motivation in combining prior art for claim rejections under 35 U.S.C. 103(a), it seems that general network traffic monitoring and management functions as applied to various applications, e.g. network monitoring as per Jannarone (column 1, lines 6-11) and Sneeringer (abstract); or business application, particular retail as per Conrad (column 1, lines 17-27) and Fox (abstract) are closely related. The combinatory of Conrad, Fox, Sneeringer and Jannarone is just to show that all related functions exist and are used in multiple industrial. The underlying technologies not specifically cited in Fox or Conrad do not mean that they are not used, e.g. Fox (abstract) a system and method for forecasting future retail performance surely requires or indicates a retail store performance data to be collected as per Conrad.

Remarks

10. The following pertaining arts are discovered and not used in this office action. Office reserves the right to use these arts in later actions.

- a. Dedrick (US 5696965 A) Electronic information appraisal agent
- b. Miura (US 5485347 A) Riding situation guiding management system
- c. Montero (US 6133912 A) Method of delivering information over a communication network
- d. Pednault (US 6810368 B1) Mechanism for constructing predictive models that allow inputs to have missing values
- e. Mathur et al. (US 5404306 A) Vehicular traffic monitoring system

Conclusion

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peling A. Shaw whose telephone number is (571) 272-7968. The examiner can normally be reached on M-F 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

pas *pas*

W. C. Vaughn
WILLIAM VAUGHN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100